

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARIO ESTRELLA and FELIX ANTONIO URBAN ABREU,
on behalf of themselves and all others similarly situated,

Plaintiffs,

REPORT AND
RECOMMENDATION
08-CV-5177 (NGG)

-against-

COQUI CHECK CASHING, INC., JCG CHECK CASHING, I
NC., LIE CHECK CASHING CORP., and JOSE GUZMAN,

Defendants.

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Gold, Steven M., United States Magistrate Judge:

Plaintiffs, on behalf of themselves and others similarly situated, bring this putative collective and class action seeking to recover unpaid wages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and New York Labor Law, N.Y. LAB. LAW § 190 *et seq.* Defendants Coqui Check Cashing, Inc., JCG Check Cashing, Inc. and Jose Guzman move to dismiss the amended complaint for failure to state a claim, and in the alternative move for partial summary judgment.¹ Docket Entry 32. The Honorable Nicholas G. Garaufis has referred defendants' motion to me. Docket Entry 41.

For the reasons stated on the record during the oral argument on defendants' motion, I respectfully recommend that defendants' motion be denied without prejudice to renewal after plaintiffs file their second amended complaint. In short, it appears that defendants' motion is based primarily upon factual assertions that have not been tested in discovery and pleading deficiencies that plaintiffs are likely to be able to correct if granted leave to amend. In light of the evidentiary issues raised by the parties' papers, and the fact that discovery has been stayed while the motion has been pending, plaintiffs may take limited discovery focused on the issues

¹ Defendant LIE has answered the complaint and has not moved to dismiss or for summary judgment.

raised during the oral argument. Plaintiffs are granted leave to file a second amended complaint that takes into account the issues discussed during the oral argument and asserts only those claims for which they continue to have a good faith basis after receiving discovery from defendants.

Any objections to the recommendations made in this Report must be filed within fourteen days of this Report and Recommendation and, in any event, on or before July 6, 2010. Failure to file timely objections may waive the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 6(e), 72; *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

/s/
Steven M. Gold
United States Magistrate Judge

Brooklyn, NY
June 16, 2010

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